




Memorandum

TO: Rules Committee

**FROM: Councilmembers
Nora Campos, Nancy Pyle**

**SUBJECT: Evergreen East Hills Vision
Strategy Task Force**

DATE: May 3, 2006

Approved:  Date: 5/3/06

RECOMMENDATION

We request the following item be added to the May 9th City Council Agenda:

“Discussion and/or action related to whether the influence of Councilmember David Cortese substantially directed and tainted the Evergreen Visioning Project Task Force, and thus the Evergreen East Hills Vision Strategy Task Force (EEHVS) process.”

BACKGROUND

On April 4, 2006 and April 25, 2006 the San José City Council reviewed its Council-Staff Interaction Policy, during which we re-affirmed the directive in the city charter which states council members may not give any directive to any member of city staff. Section 411 of the city charter further states that a Council member of the City Council as a whole may not attempt to require or coerce City Staff to make any particular recommendation or to adopt any particular position as the staff position on any matter.

It appears to us that Councilmember David Cortese violated this section of the charter in a memo dated March 1, 2005 to the then titled Evergreen Visioning Project Task Force, whereby he directed city staff on the number of housing units to be analyzed in the Environmental Impact Review (EIR). The Draft EIR was released on February 3, 2006 on this \$1B+ land use development application.

Further, we are disturbed by Councilmember Cortese’s misleading public statements during a City Council meeting on May 17, 2005 that he has not “met with developer’s lobbyists, property owner’s lobbyists at all on this issue.” Yet, according to lobbyist reports he has met with registered lobbyists to discuss the Evergreen Smart Growth Strategy dozens of times within a five-month period that includes the period the above memo was written directing city staff. We believed Councilmember Cortese, and therefore accepted his claims on what could be included as part of this process. After reviewing the lobbyist’s reports, we are concerned that city staff was directed to take action by Councilmember Cortese.

In District 5, which is actually within the EEHVS planning area, the area will be dramatically impacted by development. The goal of the City Council as it created the EEHVS, was to broaden the perspective of the advisory body reviewing the development opportunities in Evergreen while simultaneously reducing the concerns of nearby communities outside the Evergreen area by making sure they have good opportunities for informed participation in the planning processes. As representatives on the Task Forces for the City's two largest land development applications, we're deeply concerned about the possibility that the vital open, community-driven land use process has become tainted based on a Councilmember setting an agenda that was not discussed in the open.

Attachments:

- *Councilmember David Cortese Memorandum, Evergreen Visioning Project, 3/1/2005*
- *San José City Charter, Section 411*
- *2005 Lobbyist Registration Reports:*
 - *Thomas A. Armstrong – HMM Engineers (Initial Registration Report, 1st Quarter Report, 2nd Quarter Report, 4th Quarter Report)*
 - *The Schoennauer Company LLC (4th Quarter Report)*
 - *Gerry DeYoung (1st Quarter Report)*
 - *Pirayou Law Offices (1st Quarter Report)*
 - *Saggau and DeRollo, LLC (2nd Quarter Report)*

Note: Lobbyist reports referenced are on file in the Office of the City Clerk.

MEMORANDUM



TO: All EVP Task Force Citizen and
Property Owner Representatives and
City Staff

FROM: Dave Cortese
City Councilmember

SUBJECT: Evergreen Visioning Project

DATE: March 1, 2005

APPROVED:

DATE:

NEXT STEPS

After hearing the community and developer proposals, I am hereby directing staff to proceed as follows:

1. The project description for the Evergreen Visioning Project (EVP) - Environmental Impact Report (EIR) should include the following four project alternatives for the basis of the study: 3800, 4200, 4600 and 5700 housing units. (The "No Project" alternative would be studied in any case per CEQA. "No Project" includes the existing General Plan land uses and the current Evergreen Development Policy).
2. The project description should also include commercial alternatives based on the retail market study recently conducted in the Evergreen area and submitted for review to the City of San Jose, and should allow for study of at least three retail alternatives based on low, medium and high square footages of additional construction.

BACKGROUND

Over the last 18 months the Evergreen Visioning Project Task Force has deliberated over how to proceed with infill development in Evergreen in a way that generates true positive outcomes for the community. The group has produced excellent work product to date (see below), which will continue to be invaluable in guiding the land use and planning process going forward:

- Guiding Principles – a firm set of principles that must be adhered to in all future development in Evergreen.
- Amenities – public projects to enhance Evergreen recreationally, socially, economically, etc.
- Focus group work conducted in June and August 2004 – layouts proposed by the task force of what the opportunity sites (Arcadia, Campus Industrial, Evergreen Valley College, Pleasant Hills Golf Course) in question could look like, associated financial yields, and amenity and transportation improvement prioritization.

- EIR Project Description – a month-long series of negotiations that has narrowed the field of possible EIR study descriptions.

In addition to monthly meetings in public venues, the EVP Task Force began to meet in private, without members of the public, the press or myself being permitted to participate (except by invitation). Similarly, the developer consortium no doubt has conducted meetings with their stakeholders, to which I have not been privy. Therefore I am not as versed in the analytics as I could be, but intend to continue to immerse myself. What I have observed from the portions of meetings to which I have been invited is that as well thought-out as some of the conclusions are (from both the Task Force and the developer group), they appear to be based on a diverse set of variables. Without all parties utilizing the same set of assumptions, there is no way in good conscience to exclude any of the remaining four iterations from consideration, yet.

In January 2005, I asked the EVP Task Force to work with the developer group to come to consensus (by February 24, 2005) on which project alternative(s) should be studied as part of the EIR. City staff reminded both parties that any number examined for impacts in the EIR was by no means an endorsement, official city approval or any other type of "green light" that build-out would occur at that number. Rather, the EIR is an impartial, unprejudiced and comprehensive examination of impacts and mitigations across a variety of factors. Both parties worked extremely hard – particularly the citizen negotiating team, whose members by profession are not used to dealing with traffic data, housing type, etc – to reach an accord. Unfortunately that goal was not realized and we stand at an impasse. The developer consortium had agreed to have the EIR study alternatives at the unit numbers requested by the Task Force: 3800, 4200 and 4600, provided the number 5700 could be studied as well. The Task Force disagreed, and unanimously voted for the EIR to proceed with studying the first three numbers only. In light of this impasse, the transpired deadline and the conviction by both sides to remain steadfast to the numbers they have put forward, the EIR project description should be crafted to study all four numbers. However, over the next sixty (60) days, further analysis can and will be done that should narrow the four options to a single number which will become part of the new Evergreen Development Policy document.

ANALYSIS

For the past few months there has been a preoccupation with how many units the Evergreen Visioning Project would yield. As I have stated on numerous occasions as well as in writing, the project description for the EIR does not solidify a commitment to any particular unit count. It simply allows for the study of a range of units and the associated impacts. City staff has assured us that the EIR will present an absolutely unbiased account of these numbers and their impacts. At present I do not know all that I need to know in order to recommend a final number of housing units to be permitted in Evergreen. What I do know, with city staff's counsel, is that testing all four numbers will in no way undermine future negotiations over the final number but instead provide us all with accurate and current

information to utilize in further deliberations and negotiations. Staff has even suggested the possibility of studying more than four numbers within the ranges provided (once again strongly assuring an impartial study) and I am not opposed to this consideration. I would be remiss if I did not take into account the unresolved compelling arguments offered by all three of the parties so deeply involved in this process - the Task Force, developer group and city staff.

The EVP Task Force genuinely believes they have correctly interpreted the pro formas provided by the developers. They have used these pro formas to demonstrate how a 4600 unit count could generate enough funds for accomplishing all of the amenities as well as the traffic improvements, with money left to spare. The burden is therefore upon the developers to establish why anything more than 4600 is necessary to accomplishing these same goals.

CONCLUSION

In April 2005 we will have to come to an agreement over exactly how many units will be proposed in Evergreen. This decision will be memorialized in the new proposed Evergreen Development Policy, the linchpin to the entire process. This is necessary to understand how all three elements of the delicate balance would be achieved in terms of housing units, amenities/transportation improvements, and traffic. We are not yet at the juncture to make this decision, from either a timing standpoint or an informational standpoint. I see no need to artificially handicap the EIR process with this issue when its own time will come.

We still have a lot of work ahead, remembering that the full City Council would decide on the ultimate Evergreen Development Policy and General Plan land use changes. Our job is to continue to work together to create the best package possible for the existing and future residents of Evergreen.

I appreciate your on-going commitment to the EVP process.

SECTION 411. The Council; Interference With Administrative Matters.

Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint except as expressly provided in Section 411.1. However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.

Except for the purpose of inquiries and investigations under Section 416, the Council, its members and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, solely through the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, respectively, and neither the Council nor its members nor the Mayor shall give orders to any subordinate officer or employee, either publicly or privately.

Amended at election November 4, 1986

Amended at election November 3, 1992

Amended at election November 5, 1996